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ABSTRACT

The directives in this document provide guidance to students, parents, teachers, school administrators, school boards, and the general public for the formulation of local policies governing relations among the various groups and individuals who make up the school community. The content focuses on the personal responsibilities of these individuals and groups. The discussion is organized under (1) student involvement, (2) student government, (3) student inquiry and expression, (4) student press, (5) extra curricular activities and clubs, (6) personal appearance, (7) counseling, (8) student record files, (9) discipline, (10) search by school personnel, (11) police in schools, and (12) grievance and appeals. Descriptive explanations of the New York State Student Advisory Committee and the New York State Task Force on Student Affairs are appended. (JF)

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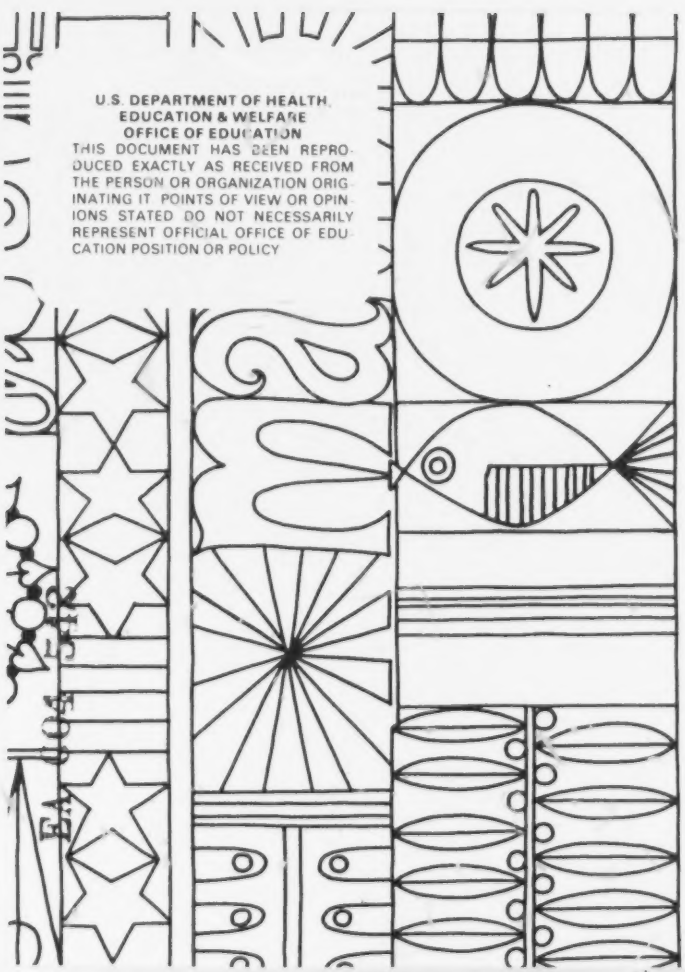

GUIDELINES FOR STUDENTS RIGHTS AND RESPONSIBILITIES

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
Albany, New York 12224

FOREWORD

Since becoming Commissioner of Education, I have become increasingly concerned about the wide range of practices in our schools with reference to the rights of students and sound school-student relationships, on the one hand, and, on the other, about the lack of understanding on the part of some students as to their responsibilities in an open society where dissent and individual freedom are prized.

A great number of evidences of the need for attention to both student responsibilities and student rights exhibit themselves in our schools every day. They include increased student restlessness and alienation; judicial emphasis on due process and individual civil liberties and the doctrine that the Constitution does not stop at the schoolhouse door; the emergence of a culturally distinct and apparently separate youth class, biologically and intellectually more mature students than those of past generations; the growth of participatory democracy and the universal demand for having a hand in the decisions which affect one's destiny; and the Constitutional amendment which lowered the voting age and therefore increased the status, as well as the numbers, of those who are now enfranchised.

All of these things, and more, urge that our schools become more aware of the importance of (1) according students those rights which are mandated by the courts and by the Commissioner's judicial decisions; (2) engaging in good, albeit not mandated, practices which have regard for the dignity of individual human beings and which promote harmonious

school-student relationships; and (3) promoting those activities which will lead students to understand that there are serious responsibilities connected with individual freedoms.

This document recognizes that students have individual civil liberties and rights, but that school officials have obligations to exercise reasonable controls. It further insists that all individuals, students as well as adults, have the responsibility of working together for the common good.

The first and fourteenth amendments have given us constitutional principles which have assured a vitality in American civilization, providing as they do a tenuous conflicting balance between the freedom of the individual and the constraints placed on that freedom by virtue of the individual's obligation to his fellow man. As another chief state school officer has pointed out, this "basic healthy duality in the American democratic ethos has affected public policy." The fine and creative balance between individual rights and social welfare has historically shifted in direction.

As a recent illustration, one can point to court decisions which have enlarged and refined individual civil liberties. In another direction, both legislative and judicial actions have emphasized equal opportunity and rights for minority groups, which in some ways have circumscribed the freedom of others and increased their obligations.

The following pages are addressed to a variety of topics which have been matters of concern to many students, teachers, administrators, and school boards within recent years. Although there are a number of

references to binding decisions by the courts and Commissioner, the document as a whole is not to be considered in itself as a mandate. Its purpose is essentially advisory. The text statements are compiled from promising and successful practices, the majority of which are presently utilized in the schools to varying degrees. It is recognized that communities, students, and schools in our State differ considerably and that every statement or recommendation does not perfectly fit all situations. Nevertheless, it is assumed that the statements may be used by local school officials as the basis for developing board of education policies and administrative procedures directed toward a sound program of intra-school relations.

A number of people, in and out of the Department, have helped to shape the following pages, but one in particular deserves to be singled out: Bill Hamilton of the Department's Student Affairs Task Force.

Gerald B. Tuffarini

Commissioner of Education

CONTENTS

	Page
FOREWORD	iii
INTRODUCTION	1
STUDENT INVOLVEMENT	5
In Curriculum Planning	5
On School Boards	6
Voting	6
STUDENT GOVERNMENT	8
STUDENT INQUIRY AND EXPRESSION	11
Student Speech	11
Access to School Communications Resources	12
Distribution of Literature	13
Speakers and Programs	14
Symbolic Speech — Buttons, Armbands, etc.	15
Patriotic Ceremonies	16
STUDENT PRESS	17
School Newspapers	17
" Underground " Press	19
EXTRACURRICULAR ACTIVITIES AND CLUBS	20
Registration of Student Groups	20
Use of School Facilities	21
Advisors	21
Exclusion from Extracurricular Activities	22
PERSONAL APPEARANCE	23

CONTENTS (Cont.)

	Page
COUNSELING	24
Concerning the Draft	24
Concerning Marriage, Pregnancy, and Parenthood	25
Concerning Other Personal Problems — Drugs, etc.	25
Confidentiality of Communication	26
STUDENT RECORD FILE	27
DISCIPLINE	29
Note on Smoking	32
SUSPENSION AND EXPULSION	33
SEARCH BY SCHOOL PERSONNEL	37
POLICE IN THE SCHOOLS	38
Normal Access	38
Police Assistance to Maintain Order	39
GRIEVANCE AND APPEALS	40
The Grievance Committee	40
An Alternative Procedure	41
The Ombudsman	42
Appeals to the Commissioner	43
APPENDIX	45
The Student Advisory Committee	45
Task Force on Student Affairs	46

INTRODUCTION

The purpose of this document is to provide students, parents, teachers, school administrators, school boards, and the general public with suggested guidelines for local policies governing relations among the various groups and individuals who make up the school community.

The increased awareness of student rights and the recent emergence of student activism in the secondary schools have created uncertainties within the school community on questions of intraschool human relations which were previously dealt with through routine administrative procedures. Many of these procedures have been rendered unusable or ineffective by social and cultural change, and by court decisions ruling that students in school have the same fundamental rights as citizens outside the school. This document suggests procedures for forestalling or responding to problems which arise in secondary schools today.

This pamphlet does not advocate a philosophy of "student rights," of "administration rights," or of "teacher rights." Its basic assumption is that few school problems will be resolved by arguments over the rights and powers of one group as opposed to others. Rather, it proposes that more of everyone's time and effort be spent determining the **responsibilities** administrators, teachers, and students have toward one another.

The administration, faculty, and students of a school have the responsibility of working together to create an educational setting which meets the needs of each student within the context of the overall goals of society. This concept is not restricted to the present document alone.

For example, it is the basic concept of the State Education Department's priority project, Redesign, which seeks to induce change in the schools through constructive involvement of all members of the school community. Accordingly, this pamphlet emphasizes the need for involvement of all concerned parties in planning and implementing sound programs of intraschool human relations.

A significant part of the student's society is the school. The school is a community — a community made up of students and adults. If, in that community, the student is given the experience of working with, living with, and socializing with other students and adults, it will become a humane community whose members care about each other and what their institution is doing to and for them. A great man has said that when members of an institution stop caring about each other or their institution, then community ceases to be and chaos results.

The headmaster of a private school has given us his thoughts on life in a school as it should be:

> "For a school to become a community, there are always paradoxes to resolve in personal goals, values, and life styles: unity with diversity, social cohesion and individuality, order and freedom. These paradoxes can be bridged by learning to appreciate and treasure differences among people as well as similarities, by helping each other to learn and grow, by genuinely sharing, genuinely giving something of one's self to someone else. Growing means that humans are growing together because they can talk to each other, because they are interested in each other, and because they

want to be better than they are—better as students, better as teachers and administrators. That is what school is all about—growing to be better humans in a community."

Hopefully, this brochure will help our schools to become communities in this best of all senses.

"Guidelines for Student Rights and Responsibilities" was planned and developed by Bill Hamilton, of the Task Force on Student Affairs, with technical writing assistance from Richard King, assistant in Occupational Education Planning. Appreciation is expressed to the following groups for reviewing drafts of the guidelines and providing many valuable suggestions:

The Commissioner's Advisory Council of Chief School Administrators;

The Commissioner's Student Advisory Committee; and

The Joint Liaison Committee of the New York State Association of Secondary School Administrators and Elementary School Principals.

Many worthwhile suggestions were also received informally from students, school personnel, State Education Department staff members.

Vivienne Anderson, Director,
Division of the Humanities and the Arts

Bernard F. Haake
Assistant Commissioner for
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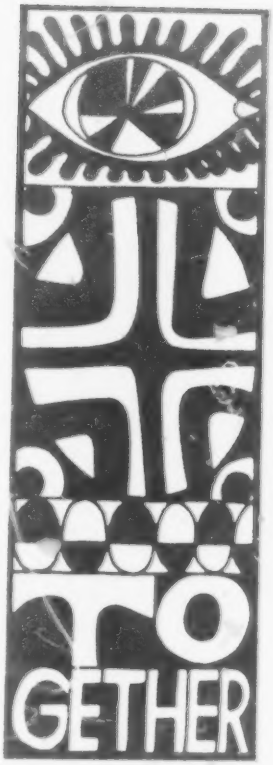
STUDENT INVOLVEMENT

In Curriculum Planning

Increasingly school authorities recognize the importance of student participation in determining the nature of their education and are providing channels through which students can substantially contribute to determining which courses are taught, the content of the courses, and methods of evaluating both the courses and their own performance.

Obviously the degree of involvement is a function of age, grade, maturity, and sophistication of students on one hand and the level and complexities of courses on the other. However, even if the student at a particular point is not skilled in content or curriculum design, he is the customer and consumer, and his opinions as to impact or probable impact of courses, course material and procedures can be extremely important and deserve careful analysis and full consideration.

One constructive means of involving students in the planning and evaluation of curriculum and instruction is a faculty-student curriculum committee composed of student, faculty, administrative, and board or board appointed representatives. Such a group could review existing curriculum offerings and explore possible changes and additions on an annual or other regularly established basis.



On School Boards

Formalized channels of pupil-board communication, through which students express their views concerning the operation of the school system, have proven helpful to many boards of education. Students currently participate as nonvoting advisors on several school boards across the country.

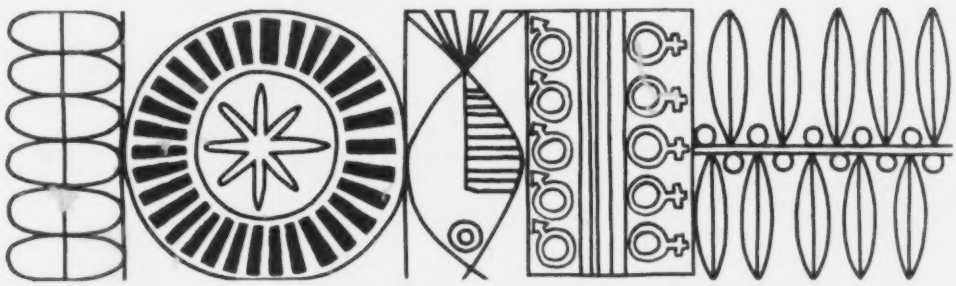
Voting

The 26th amendment to the United States Constitution reduced the minimum voting age to 18 in state, local, and Federal elections. While voting rights for 18-year olds are only indirectly related to intra-school relations, the 26th amendment affects the responsibilities of all members of the school community. Students who are 18 or older have the same responsibilities as other citizens to exercise their voting rights, and to become informed about issues and candidates. While education for good citizenship has always been a major goal of our schools, the 18-year-old vote makes it more important than ever that the schools encourage and assist students to examine issues and candidates objectively and in an informed manner. The new amendment also gives new urgency to the school's responsibility for educating students concerning the procedures for registering and voting.

17

The Counsel and Deputy Commissioner for Legal Affairs in the State Education Department has issued the following statement concerning the bearing of the 26th amendment on school elections:

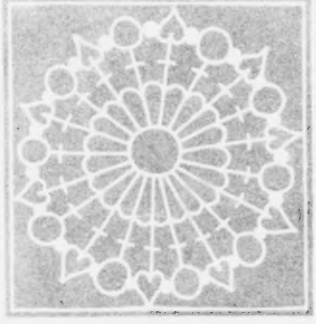
> "The . . . amendment is clearly applicable to all annual and special school district meetings and elections in New York State, including election of school board members, budget votes, and votes on bond issues and other propositions, and including revotes for any of those purposes."



STUDENT GOVERNMENT

Elected student governments have traditionally symbolized democratic principles at work in our schools. The essential principle of democratic student government is the eligibility of every student to vote and hold office. The right to vote and hold office is not contingent upon race, ethnic background, religion, beliefs, disciplinary record, achievement, evaluation of ability, or payment of student fees. It is important for students to recognize that with the right to vote goes the responsibility to exercise that right.

Charters for student government are more likely to become a realistic and supportive part of school operations if they are conceived, developed, approved, and regularly reviewed cooperatively by the full school community of students, faculty, and administration.



The student government charter should establish policies concerning

- the purposes, structure, operation, and scope of the organization, including amendment procedures;
- the rules for conducting elections and campaigns, including provisions insuring minority group representation in the student government;
- the degree to which the student body has power to allocate student activity funds; and
- the extent of the organization's access to the school's communications resources.

Once the charter has been drawn up and approved, the student government has the responsibility to act within its framework. The responsibility extends to the administration and faculty as well. Activities or programs of the student government which fall within the approved framework of its charter are preferably not subject to student, administrative, or faculty veto. If serious deficiencies in a charter become apparent, they are addressed through the same cooperative enterprise utilized in its establishment. Within the framework of the charter, students are free to examine and discuss all questions of interest to them.

To a large extent the respect afforded a student government is a function of its active force in the governing of the school. Student government and responsibilities extend beyond the area of student rights and extracurricular activities into the academic area as well. Processes by which representatives selected by the student government meet with the principal and staff representatives regularly to share in the formulation of school policies which affect students, including policies concerning the curriculum, instructional practices, and disciplinary procedures, have fully proven their worth.

Respected student governments are forums for expression, discussion, and action regarding the issues which actually motivate and trouble students today. To serve this purpose, all responsible segments of the student body, not merely of a majority or an elite, are represented.

All members of the school community share the responsibility for shaping student governments into positive instruments of student involvement. The members and officers of these bodies have the primary

responsibility of examining all issues in the light of what is best for the entire school community. Teachers and administrators provide needed guidance and assistance and insure that student government concerns are recognized, given full consideration, and are acted upon with as little delay as possible.

STUDENT INQUIRY AND EXPRESSION

Good schools afford the greatest possible opportunity for freedom of inquiry and expression to all members of the school community. Students and teachers are free to examine objectively and discuss significant issues, and the diverse points of view concerning these issues, however controversial the issues or points of view may be.

The expression by students of their attitudes, ideas, and opinions is particularly vital to education in a democracy. Effective classroom activities are structured to encourage students to express, examine, and debate their thoughts and those of others. Principals encourage students to utilize assemblies as media for expressing views and exploring issues.

The opportunity to share thoughts, and to discuss and debate ideas and values, helps to eliminate bias and prejudice, and to foster the exercise of reason in forming, understanding, and defending beliefs. This opportunity is shared by all members of the school community if each member recognizes the rights of all—students, teachers, and administrators —to express themselves, and learns to be a listener as well.

Student Speech

The first amendment to the Constitution guarantees the right of freedom of speech to all Americans, including students. However, the constitutional guarantee does not include license to interfere with the orderly conduct of classes, to coerce others to participate in a particular

mode of expression, or to violate the rights of those who disagree with a given point of view.

Student speech may be subject to disciplinary action by school officials if such speech

- is slanderous; i.e., spoken maliciously or without regard to the truth of the assertion;
- clearly and immediately incites others to damage property or physically harm others; or
- materially and substantially interfers with the normal operation of the school.

Access to School Communications Resources

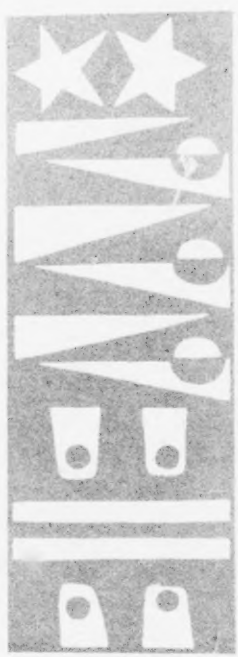
Appropriate student access to equipment and materials for disseminating announcements and information includes use of bulletin boards; use of the school public address system, subject to reasonable time limitations; and use of school duplicating equipment, subject to reasonable limitations of expense. Regulations as to the manner, time, and place for using school communications facilities are obviously subject to certain operational priorities. Recommendations as to general use beyond these requirements can be established effectively through cooperation of students, faculty, and administrators.

Distribution of Literature

School authorities may regulate the time, manner, place, and duration for distributing literature on school grounds. They may regulate the content of literature to be distributed on school grounds only to the extent necessary to avoid material and substantial interference with the requirements of appropriate discipline in the operation of the school (*Eisner* v. *Stamford Board of Education*, 314 Fed. Supp. 832; modified, 440 Fed. 2d 803).

Guidelines for distribution of literature on school grounds can be effectively formulated and distributed to all members of the school community under the auspices of a committee composed of representatives of the faculty, the student body, and the administration. Such guidelines specify the time, place, and duration of distribution, and provide a method of distribution which will not interfere with normal school procedures. For example, it should be made clear that those distributing literature may not block pedestrian traffic or entrance to the building and must remove litter, etc. The guidelines would provide for sanctions against those who violate prescribed procedures.

The guidelines may establish procedures for submission of literature for prior approval. If prior approval procedures are established, they ought to identify to whom the material is to be submitted; the criteria by which the material is to be evaluated; and a limitation on the time within which a decision must be made (*Eisner* v. *Stamford Board of Education*, 314 Fed. Supp. 832; modified, 440 Fed. 2d 803). The guidelines usually specify that if the prescribed time for approval elapses without a decision, the literature will be considered as authorized for distribution.



Speakers and Programs

Students and student organizations should be free within reasonable constraints to invite and hear speakers of their choosing. If a school allows some outside speakers to use school facilities, it may not deny other similar speakers the use of these facilities merely because such speakers are deemed controversial or undersirable by school officials (*Stacey* v. *Williams*, 306 Fed. Supp. 963, 971; 312 Fed. Supp. 742; *East Meadows Community Concerts Association* v. *Board of Education of Union Free School District No. 3, Nassau County*, 19 N.Y. 2d 605; *Matter of Buckley* v. *Meng*, 35 Misc. 2d 467). Neither can use of school facilities be denied solely because a demonstration is threatened in the event that a certain program is held (*Griffin* v. *Tatum*, 300 Fed. Supp. 60; 425 Fed. 201). However, despite rulings that mere apprehension of disruption is not sufficient to justify restriction, a District Court judge has ruled that a state university may prohibit access to outsiders where the individual has engaged in conduct which violates constitutional standards clearly embodied in State law, and there is reason to believe that he will repeat such conduct (*Dunkel* v. *Elkins*, 325 Fed. Supp. 1235).

Although in the interests of sound education, students should hear both sides of an issue, the school cannot require them to hear both sides of an issue as a condition for use of school facilities (*Brooks* v. *Auburn*, 296 Fed. Supp. 188; affirmed, 412 Fed. 2d 1171).

School authorities may regulate the times and locations of speeches and assemblies, and may require advance notice in order to avoid conflicts and insure proper protection of the school community. To insure

understanding and compliance, rules and regulations pertaining to these matters should be formulated, discussed, and published well in advance of preparation for and conduct of such programs.

Symbolic Speech—Buttons, Armbands, etc.

The Supreme Court has upheld the right of students to wear or display buttons, armbands, flags, decals, or other badges of symbolic expression, where the manner of expression does not materially intrude upon the orderly process of the school or the rights of others (*Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503; 21 L. Ed. 2d 731; 89 Sup. Ct. 733). In the *Tinker* case, the Supreme Court found that the wearing of black armbands to express opposition to American involvement in Vietnam did not involve actual or threatened disorder or disruption of the work of the school or a substantial interference with school discipline.

In a number of cases since the *Tinker* decision, various courts have addressed themselves to the question of whether or not particular instances of symbolic expression intruded upon the orderly process of the school or the rights of others. For example, a court has ruled that the wearing of armbands could not be restricted merely because the possibility of disruption existed (*Butts* v. *Dallas Independent School District*, 306 Fed. Supp. 488; rev'd. 436 Fed. 2d 728). However, courts have upheld restrictions on symbolic expression where evidence established that actual disruption or clear danger of disruption existed. For example, a court ruled against the wearing of buttons where evidence established

that the ban was necessary to preserve discipline in a racially tense high school (*Guzik* v. *Drebus*, 305 Fed. Supp. 472; aff'd., 431 Fed. 2d 594). Still another court affirmed suspensions of students for wearing black berets where the beret was worn with a symbol of the power to disrupt and there was evidence of actual disruption (*Hernandez* v. *School District No. 1, Denver, Colorado*, 315 Fed. Supp. 289).

Buttons, armbands, and other badges of symbolic expression must not contain material which is obscene or libelous, or which advocates racial or religious prejudice.

Patriotic Ceremonies

Students may decline to recite the Pledge of Allegiance and may refrain from saluting the Flag (*West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624; 87 L. Ed. 1628). Students who choose to refrain from such participation have the responsibility to respect the rights and interests of classmates who do wish to participate in a meaningful ceremony. A student who chooses not to participate may either stand and remain respectfully silent or leave the classroom during the rendering of the salute or pledge. (*Matter of Beilenberg*, 9 Ed. Dept. Rep. 196; *Richards* v. *Board of Education*, UFSD # 17, U.S.D.C., E.D.N.Y., Judge Travia, decided July 10, 1970). A student may decline to participate in the salute to the Flag and the Pledge of Allegiance without securing permission from his parents (*Matter of Bustin*, 10 Ed. Dept. Rep. ; Decision No. 8257, dated March 25, 1971).

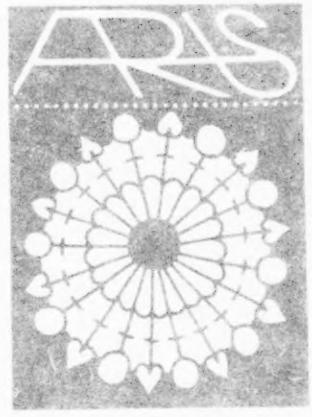
STUDENT PRESS

School Newspapers

Official school publications such as school newspapers should reflect the policy and judgment of the student editors (*Lee* v. *Board of Regents of State Colleges*, 306 Fed. Supp. 1097; aff'd. 441 Fed. 2d 1257). Students have the responsibility to refrain from libel and obscenity, and to observe the normal rules for responsible journalism. Within these bounds, student papers are as free as other newspapers to report the news and to editorialize.

Students who are not members of the newspaper staff ought to have access to its pages. Particularly when there is only one school paper available, the normal rules for responsible journalism suggest that access be provided for opinions which differ from those of the editors. The criteria for submission of material by a nonstaff member should be published and distributed to all students. Material submitted by nonstaff members are best reviewed by the same personnel who review staff materials, and according to the same criteria.

It is recommended that guidelines for an official school publication be developed and distributed by a joint student-faculty-administration committee or comparable mechanism and that the same group participate in the selection of newspaper staff members.



Staff members should be protected from removal or reprisal by groups or individuals who disapprove of editorial policy or content on grounds other than legality. Courts have ruled that school authorities may prohibit dissemination of student-originated material only when such material would materially and substantially interrupt the educative process or intrude upon the rights of others (the rationale of the United States Supreme Court in the *Tinker* case; also see *Matter of Panarella* v. *Birenbaum*, 37 AD 2d 987).

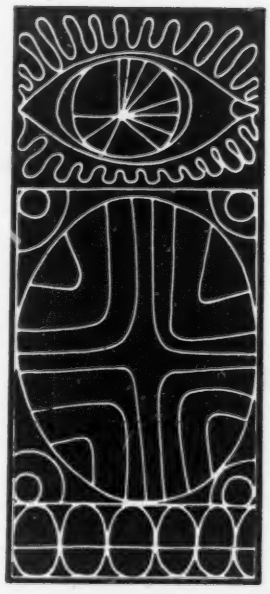
The student press can be a valuable learning device and an important educational resource. Its effectiveness, however, is substantially impaired if student editors function under imminent fear of discipline for errors in judgment. The right to freedom of expression carries with it the right to make mistakes on occasion. This, too, is an essential portion of the learning process. (*Matter of Brociner*, 11 Ed. Dept. Rep. ; Decision No. 8420, dated February 22, 1972).

Staff members may be held responsible for materials which are libelous or obscene, and such publications may be prohibited. If in doubt concerning the libelous or obscene nature of a statement, staff members should consult the school district attorney.

"Underground" Press

The constitutional right of freedom of speech guarantees the freedom of public school students to publish newspapers other than those sanctioned by the school. However, the school has no responsibility to assist students in the publishing of such newspapers, nor may the school be held responsible for any statements published in them. The fact that a staff member of such a paper is a student at a given school does not indicate that the paper is representative of that school. The newspaper staff members themselves have sole responsibility for any statements published.

Although they are not sanctioned by the schools, unofficial publications have moral and legal obligations to observe the normal rules of responsible journalism.



EXTRACURRICULAR ACTIVITIES AND CLUBS

Registration of Student Groups

Most schools require student organizations to register with the school in order to obtain available school funds and the use of school facilities. The school must register any group organized for a purpose not prohibited by law, if the group submits a list of members designated as contacts, its constitution and bylaws, and the constitution and bylaws of any off-campus organization with which it is affiliated (*NAACP* v. *Button*, 371 U.S. 415, 444-45; 9 L. ed. 405; 83 Sup. Ct. 328). The school may not require a student group to submit a membership list as a requirement for becoming or remaining registered (*NAACP* v. *Alabama*, 367 U.S. 449, 462). A school does not refuse registration to any student group solely because it is affiliated with an off-campus organization.

A mechanism should be developed for student-faculty-administration cooperation in the registration and regulation of student organizations. Before a decision is reached to ban, discontinue, or discipline a student group, that group deserves a hearing with due process. Interfering with school discipline, failing to abide by the terms under which the group was approved, and presenting a clear threat to the health or safety of members of the school community, are valid reasons for disciplinary action.

Student organizations should not restrict membership on the basis of race, sex, national origin, or any other arbitrary criteria. They may

establish reasonable membership criteria if these are equally applied to all applicants; for example, requiring all French Club members to speak French.

Student groups have the responsibility to make clear to the public that their programs do not necessarily reflect the views of the institution as a whole. Use of the school name when participating in a public demonstration is improper unless permission has been granted by the principal or his designated official.

Student groups also have the responsibility to recognize that persons who disagree with their views and programs have the right to choose for themselves whether to listen to the group's point of view, and must not be coerced or harassed into doing so.

Use of School Facilities

It is recommended that boards of education encourage suggestions about the use of school facilities from students, faculty and staff, and community groups affected by these decisions. Basic considerations include regulations and procedures pertaining to adequate scheduling of facilities, including advance requests and charges, priority of requests, and care and maintenance. The regulations should be flexible enough to provide for the differing needs of groups.

Advisors

If a student organization decides or is required to have an advisor, the function of the advisor is to counsel, not to control or censor, and

he should not be held responsible for the actions of the student group if it rejects his counsel.

Exclusion from Extracurricular Activities

There must be a legal basis for curtailing full participation in extracurricular activities (*Matter of Myers*, 9 Ed. Dept. Rep. 9). The extent of disciplinary exclusion must be neither arbitrary, capricious, nor unreasonable (*Matter of Walczyk*, 8 Ed. Dept. Rep. 154).

A student may not be prohibited from participation in extracurricular activities or school athletics because of his dress or appearance, unless it constitutes a danger to health or safety, or prevents his full participation by physically impairing his ability to perform (*Matter of Vartuli*, 10 Ed. Dept. Rep. ; Decision No. 8297, dated June 21, 1971).

Participation in all the activities of the school must not be restricted for a particular student solely because of marriage, pregnancy, or parenthood (*Johnson* v. *Board of Education of the Borough of Paulsboro*, U.S.D.C.A. Docket No. 172-70; *Bentley* v. *Board of Education of Harrodsburg*, 383 SW 2d 677).

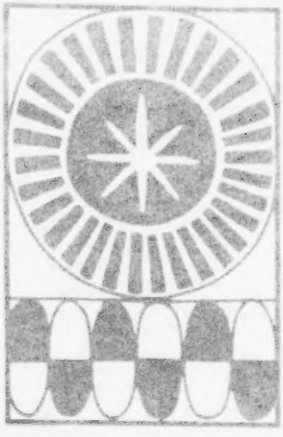
Participation in graduation ceremonies may not be denied solely because of pregnancy (*Matter of Murphy*, 11 Ed. Dept. Rep. ; Decision No. 8409 dated January 31, 1972).

PERSONAL APPEARANCE

A board of education may not impose limitations on dress in which fashion or taste is the sole consideration, even if a majority of students have approved a school dress code (*Matter of Cossey*, 9 Ed. Dept. Rep. 11). A student may not be excluded from regular instruction because of his appearance if style, fashion, or taste is the sole criterion for such exclusion (*Matter of McQuade*, 6 Ed. Dept. Rep. 37). Rules concerning student dress must relate to a specific educational purpose, such as health, safety, or full participation in school activities (*Matter of Johnson and Watkins*, 9 Ed. Dept. Rep. 14). School authorities may prohibit dress which is so distractive as to interfere with the learning process (*Matter of Dalrymple*, 5 Ed. Dept. Rep. 113).

While school authorities may require students participating in physical education classes to wear certain types of clothing; e.g., sneakers, white sox, shorts, tee shirts, they should not prescribe a specific brand which students must buy.

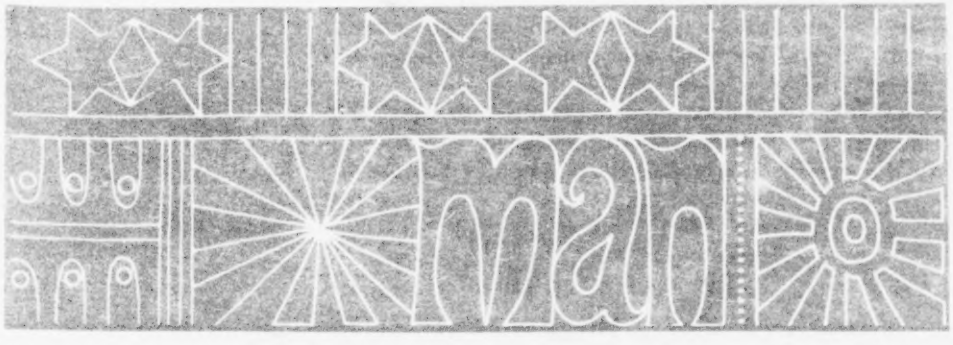
A student may not wear headgear in the classroom during actual instruction, except for students of the Jewish faith, who are permitted to wear the yarmulke in the classroom (*Matter of Jimenez*, 9 Ed. Dept. Rep. 172).



COUNSELING

Concerning the Draft

Obligation to military service is one of the major facts of life for male high school students. The high school student needs information concerning this obligation in order to plan and prepare for his future. Students should have access to counselors who are qualified to provide students with the information they need concerning military service obligations. The counselor's responsibility is to provide unbiased information to assist students in planning their futures; his role is not that of a recruiter or of a draft-evasion counselor.



Concerning Marriage, Pregnancy, and Parenthood

The opportunity to participate in all the activities of the school must not be restricted or denied solely because of marriage, pregnancy, or parenthood (*Johnson* v. *Board of Education of the Borough of Paulsboro*, U.S.D.C.A. Docket No. 172-70; *Bentley* v. *Board of Education of Harrodsburg*, 383 SW 2d 677). If a student so desires, she may return to the school she previously attended after the birth of her child.

Students should have access to counselors who are qualified to provide objective information to students concerning pregnancy and marriage, and schools should make every effort to provide programs and services appropriate to the special needs of pregnant girls.

Concerning Other Personal Problems—Drugs, etc.

Personal concerns such as drug problems and veneral disease can seriously threaten the educational as well as the personal development of high school students. Schools today have the responsibility to make relevant and objective information concerning such problems available to students, and to refer students seeking help with severe personal problems to individuals or agencies capable of providing direct assistance.

Confidentiality of Communication

The law has traditionally recognized that the nature of certain relationships (e.g., physician/patient, lawyer/client) encourages a person to disclose information about himself and his affairs. He might not have revealed the information if the relationship had not included the understanding that such information could not lawfully be repeated. These statutory privileges are for the benefit of the patient and client, rather than the practitioner and, consequently, may be waived.

As a general rule, information received by teachers and other school officials is not privileged and may be revealed by the recipient of such knowledge whenever he feels that it is appropriate to do so. Not all communications with persons capable of entering into privileged relationships (e.g., attorneys, doctors, dentists, licensed practical and registered professional nurses, clergymen, certified social workers, and registered psychologists) will be privileged per se; technical rules of evidence will be used to determine when a confidential relationship exists.

STUDENT RECORD FILE

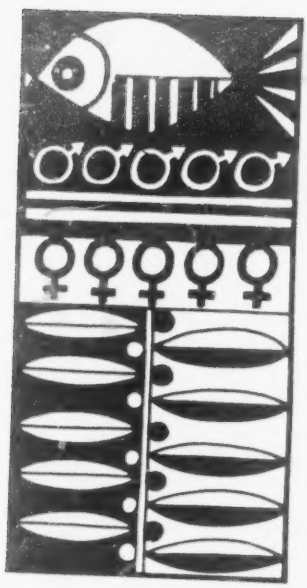
Permanent record files are intended to provide information which can be used to develop the best possible educational program for each student. A well developed file contains information useful for counseling, individual instructional program design, recommendations as to advance study, job placement, and a variety of similar purposes. Information typically includes "progress reports, subject grades, intelligence quotients, tests, achievement scores, psychological and psychiatric reports, medical records, disciplinary records, selective guidance notes and evaluation of students by educators" (*Matter of Thibadeau*, 1 Ed. Dept. Rep. 607).

Information subject to change which should not be permanently recorded in the student's permanent record file may be recorded in a temporary file, which should be destroyed shortly after the student leaves the school.

A parent or legal guardian is ntitled to inspect the student record file, and not merely to have items selected and read by school officials. At the time of such inspection, it is advisable that appropriate school personnel be present to prevent misinterpretations of the record, and to answer questions (*Matter of Thibadeau*, 1 Ed. Dept. Rep. 607). Access to both permanent and temporary record files are limited to the student, his parents or legal guardian, and school personnel, except when the student gives written permission to allow access to other personnel or

when courts subpoena such records. All records should be open to challenge by the student and/or his parents or legal guardian, but this right of question does not, per se, imply an obligation upon school personnel to make changes in the records.

No information should be released to the Selective Service System, except at the written request of the student. "The responsibility for keeping a selective service board informed regarding the current student status of a registrant is upon the registrant himself" (Daniel O. Omer, Deputy Director of Selective Service, December 2, 1968).



DISCIPLINE

An awareness of rules on the part of students minimizes discipline problems. Rules concerning student conduct ought therefore to be clearly stated in writing, and distributed to all students at the beginning of each school year or at such time as they enter the school.

Students, like other people, are more likely to understand, respect, and obey rules which they have had a part in formulating. Accordingly, representatives of the student body, the faculty, and the administration should work jointly to

- determine codes of acceptable and unacceptable behavior,
- establish an enforcement system, and
- establish mechanisms for handling grievances and appeals.

Effective guidelines are sufficiently specific to enable students, teachers, administrators, and parents to know what is expected in terms of conduct and discipline within the schools.

Guidelines established cooperatively provide a sound basis for discipline in the school. Codes of conduct, disciplinary practices, the enforcement system, and the grievance and appeal procedures should be reviewed periodically.

An annual reevaluation of the status of conduct and discipline in the school can prove helpful in considering needed changes. A representative committee or an independent student court could serve as an advisory or review body to assist school authorities in the administration of discipline.

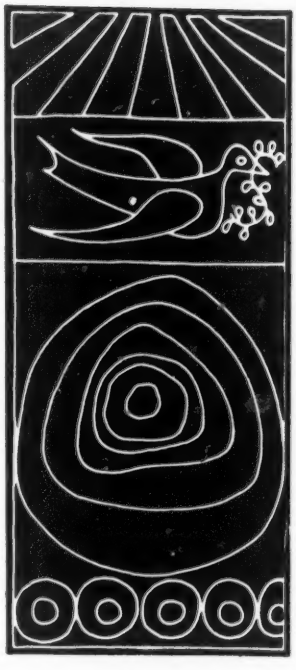
The standards of conduct which are established must not infringe upon the constitutional rights of the students. They should forbid injury to persons or property and interference with the learning process but need not prescribe school discipline for offenses committed within the school which are already adequately provided for by criminal law, unless the presence of the student in school would constitute a danger to the student himself, to other members of the school community, or to the continuation of the educative process. The school may not punish a student for offenses occuring off school grounds, unless it can be established that such offenses are directly related to the orderly operation of the school.

The school may not withhold a student's diploma or limit a student's academic progress in any way because of nonacademic or attitudinal factors such as political activity. "One may not be arbitrarily deprived of whatever certificate, diploma, or other evidence of . . . education may be provided" (*Matter of Goldwyn* v. *Allen*, 54 misc. 2d 94).

Further, disciplinary action should not be predicated upon so nebulous a finding as "lack of good citizenship," a term which may be interpreted by reasonable men in completely different ways. It is, of course, a major responsibility of the school system to inculcate in students a basic respect for and adherence to the principles of good citizenship. This is an essential portion of the learning process. However, it is educationally unsound to brand an individual with the label of "poor citizen." The placing of such a label upon a student is not a proper function of the school system. (*Matter of Wilson*, 11 Ed. Dept. Rep. ; Decision No. 8421, dated February 22, 1972).

At the present time, a teacher has the legal right to administer corporal punishment, unless board regulations prohibit it. If corporal punishment is used, it must be reasonable in manner and moderate in degree (35.10 Penal Law). No disciplinary action should exceed in degree the seriousness of the offense. It should be recognized that corporal punishment always contains the danger of excessiveness, and other forms of discipline are readily available.

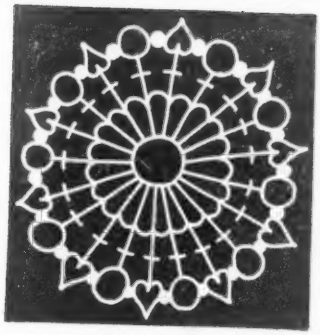
"Before a pupil may be disciplined, whether by expulsion, suspension, or curtailment of privileges, two essential elements must be present. There must be some conduct which serves as a predicate for the imposition of discipline and there must be a reasonable degree of certainty that the pupil was the perpetrator of or otherwise participated in such conduct" (*Matter of Port*, 9 Ed. Dept. Rep. 107).



Note on Smoking

Regulations concerning student smoking on school grounds have long been a problem area in intraschool relations. There is no State law which specifically forbids minors under 18 years of age to smoke tobacco. The 18-year minimum sign which is displayed on cigarette machines forbids the sale of cigarettes to minors, but not the use of cigarettes by minors. Policies which forbid smoking on school grounds are usually local laws, bylaws of the board of education, or decisions of school administrators and/or representative school committees.

Whatever decisions are reached at the local level regarding student smoking on school grounds, it is hoped that all concerned will give full consideration to the extreme health hazards associated with cigarette smoking, and that individuals will refrain from smoking by their own volition and for their own benefit. It is also hoped that whatever decisions are made regarding smoking on school grounds will apply equally to all members of the school community. It is inconsistent, we believe, to prohibit student smoking on school grounds, and yet to permit others to smoke in faculty rooms on the same school grounds.



SUSPENSION AND EXPULSION

A student is entitled by law to a free secondary education until he graduates or reaches age 21. He may continue his secondary education after graduation if he is a full-time student pursuing a course of study. This right is contingent upon the student's fulfilling his responsibility to attempt to complete his academic program (*Matter of Henderson*, 10 Ed. Dept. Rep. ; Decision No. 8301, dated July 6, 1971). A student who does not fulfill this responsibility may be denied the right to continue his education. If the student is under the compulsory attendance age of 16, the board of education must provide alternative instruction for him. The board of education is not required to provide alternative instruction for an expelled student who is over the compulsory age (*Matter of Reid* v. *Nyquist*, 65 misc. 2d 728; *Matter of Chipman*, 10 Ed. Dept. Rep. ; Decision No. 8286, dated June 7, 1971).

Minor disciplinary problems are preferably handled by the faculty, with the principal dealing with the more serious disciplinary problems which could result in sus ension. A teacher, guidance counselor, or an assistant principal may not suspend a student (Education Law, section 3214). The principal may suspend a student for a period not to exceed 5 schooldays if the board of education has adopted a bylaw which permits him to do so (Education Law, section 3214). Otherwise, only the board of education, board of trustees or sole trustee, district superintendent, or superintendent have the power to suspend students (Edu-

cation Law, section 3214). The following minors may be suspended from required attendance, according to section 3214 of the Education Law:

- a minor who is insubordinate or disorderly, or whose conduct otherwise endangers the safety, morals, health, or welfare of others;
- a minor whose physical or mental condition endangers the health, safety, or morals of himself or others; and
- a minor who, as determined in accordance with the provisions of the law, is feebleminded to the extent that he cannot benefit from instruction.

No student may be suspended for a period in excess of 5 school-days unless he and the person in parental relation to him shall have had an opportunity for a hearing at which the student shall have the right to be represented by an attorney, the right to present witnesses and other evidence on his own behalf, and the right to cross-examine witnesses against him. A student who has been suspended prior to a hearing must be placed back in school or provided with suitable alternative instruction commencing with the sixth school day if the hearing has not been concluded or the superintendent or board of education has not rendered a decision as of that date (*Matter of Anderson*, 11 Ed. Dept. Rep. ; Decision No. 8328, dated September 2, 1971). The notice of the hearing should advise the student of the grounds for the charges in specific enough terms to enable him to anticipate reasonably the subject content of the proposed hearing and to prepare a defense thereto (*Matter*

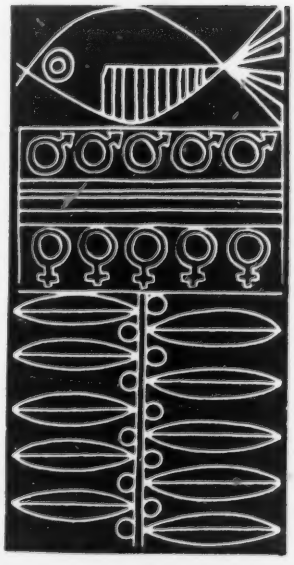
of Rose, 10 Ed. Dept. Rep. ; Decision No. 8154, dated July 16, 1970; (*Matter of Henderson*, 11 id. ; Decision No. 8301, dated July 6, 1971; *Matter of Lawlor*, 11 id. ; Decision No. 8452, dated March 21, 1972).

The student should be allowed to remain in school prior to the hearing unless his presence in school poses a clear danger to his physical or emotional safety, to other students, faculty, or institutional property, or to the continuation of the learning process (*Stricklin* v. *Board of Regents of the University of Wisconsin*, 297 Fed. Supp. 416; 420 appeal dismissed, 420 Fed. 2d 1257).

The student may bring a parent with him to the hearing, and both the student and the person invoking the hearing procedure may be represented by counsel. An interpreter should be available, if needed.

At the hearing, persons having direct knowledge of the facts should be called to testify. Hearsay evidence alone is not sufficient, notwithstanding the administrative nature of the proceeding. There must be some direct evidence of guilt of the charges. As in courts, the burden of proving guilt rests upon the person making the charge, and the student is entitled to a presumption of innocence of wrongdoing unless the contrary is proved (*Matter of Montero*, 10 Ed. Dept. Rep. ; Decision No. 8188, dated September 9, 1970). The student may testify in his own behalf and is free to cross-examine witnesses against him.

Both the superintendent and the board of education are authorized to appoint a hearing officer to conduct student disciplinary hearings. The report of the hearing officer is advisory only, and the superintendent or board may accept or reject all or any part of such report. A record of



the hearing shall be maintained either by a stenographic transcript or by use of a mechanical recording device (Chapter 1149 of the Laws of 1971). The student should be provided with a copy of the transcript upon his written request.

If the student is not absolved of the charged acts of misconduct, he may appeal the findings and determination of the superintendent to his board of education. Where the board of education has, itself, made the determination or has, on appeal, affirmed the determination of its superintendent, a student may further appeal either to the Commissioner of Education in accordance with the provisions of section 310 of the Education Law or to the courts pursuant to Article 78 of the Civil Practice Law and Rules.

SEARCH BY SCHOOL PERSONNEL

When school officials have a reasonable suspicion that contraband is secreted in a student's locker or on his person, they may act upon that suspicion and search the locker or student without the student's consent. The resulting evidence may be used in connection with the student's disciplinary hearing (*Matter of Chipman*, 10 Ed. Dept. Rep. ; Decision No. 8286, dated June 7, 1971). It is recommended that the student be present if his locker is searched.

A school administrator not acting in concert with the police is a private person to whom the fourth amendment prohibition against unreasonable searches and seizures does not apply (*People* v. *Stewart*, 63 misc. 2d 601).

When a reasonable suspicion arises that something of an illegal nature may be occuring on school property, school officials have the responsibility of ascertaining the truth of such information (*People* v. *Stewart*, 63 misc. 2d 601).

Recent Supreme Court decisions regarding the right to counsel, the privilege against self-incrimination, and the constitutional warning prior to the admissibility of a confession are inapplicable to administrative searches (*People* v. *Stewart*, 63 misc. 2d 601).

The student's primary responsibility in regard to searches and seizures is to be familiar with and abide by the school's standards of conduct.

POLICE IN THE SCHOOLS

Normal Access

Police can enter schools if a crime has been committed, if they have a warrant for arrest or search, or if they have been invited by school officials. The police may search a student, or his locker, if they have a valid warrant to do so, or if they have "probable cause" to believe that the student is in possession of contraband.

In the absence of a warrant or probable cause for suspicion, police authorities have no right to interview students in the school building, or to use the school facilities in connection with official police work, nor does the board of education have any obligation to make students available to the police. If police wish to speak to a student without a warrant or probable cause for suspicion, they should take the matter up directly with the student's parents (Formal Opinion of Counsel No. 67, New York State Education Department, March 7, 1952; 1 Ed. Dept. Rep. 766).

When police are permitted to interview students in school, the students must be afforded the same rights they have outside the school. They must be informed of their legal rights, may remain silent if they so desire, and must be protected from coercion and illegal restraint. Within the framework of their legal rights, students have the responsibility to cooperate with the police.

Teachers and administrators have the responsibility to maintain effective communications with the student body. Good communications can often forestall or resolve a problem before it becomes necessary to involve police authorities.

Police Assistance to Maintain Order

The criterion for summoning police authorities to the school grounds should be a demonstrated necessity that police are required to prevent personal injury or serious property damage.

GRIEVANCE AND APPEALS

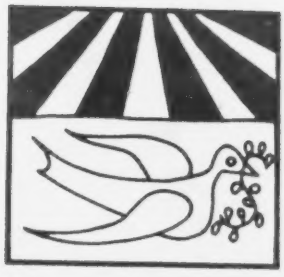
A grievance is simply any situation occurring in the course of the school's operation which causes a student to consider himself aggrieved. Students should be encouraged to discuss their grievances informally with the persons involved, prior to invoking formal grievance procedures. However, it is desirable for schools to provide mechanisms for the expression and resolution of grievances which cannot be resolved through informal discussion. Although the diversity of schools and school districts within New York State does not lend itself to a uniform grievance procedure, the suggestions which follow could serve as guidelines for establishing grievance procedures in local schools.

The Grievance Committee

A grievance committee could be formed, consisting of

- two parents selected by the PTA or other parent representative group in the school;
- two students elected by the student body;
- two faculty members elected by the faculty; and
- two representatives appointed by the principal. These representatives need not be administrators.

All members of the school community would be informed of the committee's existence and membership. A list of grievance committee members would be permanently posted on bulletin boards.



Any student with a grievance could communicate his concern in writing to any member of the grievance committee, who in turn would bring the grievance before the committee for consideration. The committee would have the responsibility of carefully investigating the alleged grievance, and reporting its findings and recommendations to the school principal. The principal would be responsible for taking action in regard to the committee's recommendations and/or referring the matter to the superintendent for action on his part.

An Alternative Procedure

Some alternative procedures provide for review of grievances at various administrative levels, within prescribed time limits. One model functions as follows:

The first step involves submission of a grievance in writing to the principal, unless the grievance directly involves the principal or one of his policies, in which case the student might wish to file his grievance with the superintendent of schools. When a grievance is filed with the principal, he would call a meeting of personnel appropriate to the grievance, with student and staff representation permitted in accordance with preestablished rules. The principal is expected to resolve the matter equitably within a stated time period following the meeting and to communicate his decision in writing to all parties to the grievance. Failure on the part of the principal either to call a meeting or to render a decision within the designated time constitutes the basis for an auto-

matic appeal to other specified administrative levels at which similar time and administrative patterns are followed.

Such grievance procedures usually employ a principal-superintendent-board of education appeal route.

Although levels for appeals would vary somewhat within the different structures of school districts in New York State, the principal of the grievance procedure could be applied to any of these structures. Final appeal in New York State is to the Commissioner of Education.

The Ombudsman

The institution of the ombudsman has received increasing attention during recent years as a means of humanizing bureaucracy, including the educational variety (for example, see Seymour P. Tachman and David Bresnick, "An Educational Ombudsman for New York City?" *School and Society*, vol. 79, No. 2332, March 1971). The ombudsman could work within the context of any number of grievance procedures adopted by local schools.

The ombudsman would be a prestigious person selected to investigate possible injustices within the school community, either on his own motion or upon the complaint of a member of the school community. Depending on the nature of the problem, the ombudsman could either channel complaints to appropriate school officials, or conduct his own investigation and issue recommendations. His recommendations could help to build trust within the school community by quickly exonerating any who might be unjustly or accidentally accused, and

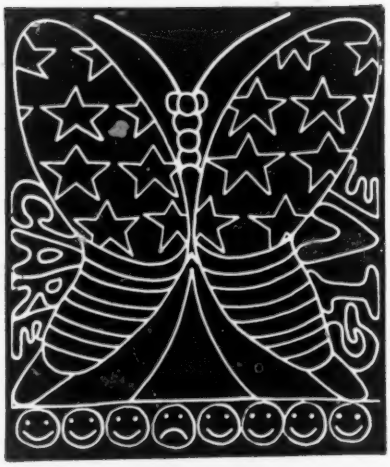
bringing to light and helping to remedy injustices which might exist. The ombudsman's effectiveness would require access to all school records, and the cooperation of all members of the school community.

Although the ombudsman would have no administrative power to take disciplinary actions or to countermand official orders, he would need to occupy a position of high status in the school community. His status would be best reflected by the respect and trust in which his office is held by all segments of the school community.

Appeals to the Commissioner

It is hoped that grievances will be resolved by local grievance procedures such as those outlined above. When these procedures do not lead to resolution, however, "any person conceiving himself aggrieved may appeal to the Commissioner of Education who is . . . authorized and required to examine and decide the same" (Education Law, section 310). The Commissioner of Education will hear an appeal only when there is an actual existing controversy between the parties involved. He will not hear appeals which seek only advisory opinions.

Appeals to the Commissioner are governed by specific provisions of The Regulations of the Commissioner of Education. Information concerning these procedures may be obtained from the Office of Counsel, State Education Department, Albany, New York 12224.



APPENDIX: The Student Advisory Committee and the Task Force on Student Affairs of the State Education Department

To increase opportunities for student involvement in educational planning, and to enable the Regents, the commissioner, and Department personnel to become more familiar with the concerns and problems of high school students, the State Education Department has established a Student Advisory Committee and a Task Force on Student Affairs.

The Student Advisory Committee

The Student Advisory Committee is a group of 20 students from all regions of the State, who meet in Albany five times a year to advise the Regents, the commissioner, Department personnel, and committees of the Legislature regarding all areas of student affairs, particularly issues of current student concern. These meetings supplement the less formal contacts all of these persons have with students in the course of their work. Members of the committee are elected each year by the student bodies of 20 schools selected randomly by a computer, with provisions to insure that each region of the State is represented.

In addition to meeting with educational policy-makers and administrators, the Student Advisory Council prepares position papers and recom-

mendations on specific issues which the members identify as priority areas of student concern. Many members involve other students in their work. Some members have gone so far as to hold countywide conferences to give their fellow students an opportunity to provide input to the Student Advisory Council.

Further information concerning the selection and function of the Student Advisory Committee is available from the Task Force on Student Affairs in the State Education Department.

Task Force on Student Affairs

The State Education Department Task Force on Student Affairs is a small group of professionals charged with facilitating the exchange of views and information between secondary students and educational administrators at both the State and local levels. The specialists in student affairs are recent college graduates, young enough to comprehend the concerns of students, and mature enough to see both sides of an issue. The Task Force helps to keep the various Department units informed concerning educational issues as seen from the perspective of students. It works closely with the Student Advisory Committee, coordinating meetings of the committee with State personnel. Increasingly, the Task Force on Student Affairs is involved in advising students and administrators throughout the State on constructive means of student participation in the planning and governing of education.